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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 KEVIN L. HENDRICKSON,

10 Plaintiff,

11 v.

12 THURSTON COUNTY, et al.,

13 Defendants.

CASE NO. C06-5374BHS

ORDER DISMISSING
SELECTED CLAIMS AND
ORDERING THE PARTIES TO
SHOW CAUSE

14 This matter comes before the Court on six summary judgment motions, five which
15 were filed by Defendants (Dkts. 124, 129, 130, 132, and 137) and one filed by Plaintiff
16 (Dkt. 134). The Court has considered the pleadings filed in support of and in opposition
17 to these motions and the remainder of the filed herein.

18 This matter arises from Plaintiff Kevin Hendrickson's allegations that the City of
19 Tacoma and Tacoma City Police Officers William Budinich and Michael Romaine, the
20 remaining Defendants in this action, wrongfully confined him in jail after mistaking him
21 for another individual for whom there was an outstanding arrest warrant. Mr.
22 Hendrickson also alleges that the Defendants illegally searched, seized and never returned
23 his personal property, including his pickup truck, car, and car hauler.

24 **I. FACTUAL BACKGROUND**

25 At all times relevant, Mr. Hendrickson was employed at Downtown Auto Body
26 ("the body shop"), located on South Tacoma Way in Tacoma, Washington, near the
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1 intersection at South 45th Street. South Washington Street runs parallel to South Tacoma
2 Way, and is located just west of Downtown Auto Body.

3 Mr. Hendrickson contends that he purchased a used 1991 Chevrolet S-10 pickup
4 truck ("truck") in May 2004. He maintains that he registered the truck with the
5 Department of Licencing ("DOL") using the loss title affidavit which was provided to
6 him by the seller. Mr. Hendrickson later received license plates from DOL and attached
7 them to the truck. The vehicle identification number ("VIN number") listed on the title
8 did not match the actual VIN number affixed on the truck. Mr. Hendrickson maintains
9 that he was unaware of this discrepancy before and after he purchased this truck.

10 A few days before August 23, 2004, Mr. Hendrickson maintains that he attended
11 an abandoned vehicle auction in Olympia, Washington, and purchased a used 1992
12 Pontiac Grand Prix ("Pontiac"). He was provided an abandoned vehicle report ("AVR"),
13 which was a temporary title for the vehicle. Mr. Hendrickson placed this AVR in the
14 glove compartment of his truck, and maintains that he intended to register the Pontiac
15 with DOL later that day or soon thereafter.

16 Unable to immediately transport the Pontiac, Mr. Hendrickson left the Pontiac at
17 the auction site and returned on the morning of August 23, 2004, to tow it back to
18 Tacoma. To tow the Pontiac, Mr. Hendrickson maintains that he utilized a car hauler he
19 previously obtained at a different abandoned vehicle sale. Mr. Hendrickson towed the
20 Pontiac using his truck and the car hauler to Downtown Auto Body, where he legally
21 parked on South Washington Street, across a large vacant lot from the body shop.

22 **A. PLAINTIFF'S ARREST FOR POSSESSION OF STOLEN PROPERTY**
23 **AND OUTSTANDING WARRANT**

24 At around 9:00 a.m. on the morning of August 23, 2004, Michael Brutsche was
25 driving through Tacoma when he spotted a large cargo trailer in an unfenced parking lot
26 between South Tacoma Way and South Washington Way next to the body shop. Mr.
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1 Brutsche recognized the trailer as his grandfather's, which had been stolen several months
2 earlier. He called his grandfather and the police and waited for both to arrive.

3 While Mr. Brutsche was waiting, he saw a man, later identified as Mr.
4 Hendrickson, drive up in his truck hauling the Pontiac. Mr. Hendrickson was then seen
5 approaching the trailer and attempting to access the trailer. Mr. Hendrickson then went
6 into the body shop next to the vacant lot. Soon after Michael Brutsche arrived at the
7 vacant lot, his grandfather, Leo Brutsche, met him at the lot.

8 Tacoma Police Officers Budinich and Romaine responded to Michael Brutsche's
9 call. When they arrived at the vacant lot, Leo Brutsche informed the officers that the
10 trailer in the lot was his and that it had been stolen. Officer Budinich confirmed the VIN
11 number on the trailer and that the trailer had been reported stolen. The Brutsches also
12 informed the officers that they witnessed Mr. Hendrickson get out of his truck and
13 attempt to access the trailer. They also informed the officers that Mr. Hendrickson had
14 entered the body shop next to the lot.

15 Officer Budinich then went to the building of the body shop, where he located Mr.
16 Hendrickson. According to Mr. Hendrickson, the officer looked at the driver's license and
17 informed Mr. Hendrickson that he was under arrest for an outstanding warrant out of
18 Thurston County. According to Defendants, the officer initially placed Mr. Hendrickson
19 under arrest for possession of stolen property. Defendants maintain that Mr. Hendrickson
20 first denied having any involvement with the stolen trailer, but later admitted that he was
21 storing some of his personal items in the trailer. Officer Budinich then took the keys from
22 Mr. Hendrickson's belt and used the keys to open most of the locks of the trailer.

23 Defendants maintain that Officer Budinich discovered the outstanding warrant
24 after placing Mr. Hendrickson under arrest when he conducted a routine warrants check
25 by radioing the Records Center of the Law Enforcement Support Agency ("LESA").
26 LESA ran the check for Officer Budinich by running Mr. Hendrickson's name and date of
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1 birth. In his deposition, Officer Budinich maintains that he probably asked Mr.
2 Hendrickson for his name and date of birth, but did not recall obtaining his driver's
3 license. The operator at the Records Center advised Officer Budinich that there was a
4 confirmed warrant for Mr. Hendrickson.

5 As it turns out, the warrant in question was actually for Robert Eugene
6 Christensen, who had allegedly stolen Mr. Hendrickson's identity. Apparently, Mr.
7 Christensen provided officers with the name "Kevin Hendrickson" and gave them Mr.
8 Hendrickson's correct date of birth when Mr. Christensen was arrested in 1999. As a
9 result, the name "Kevin Hendrickson" with the date of birth "2/21/55" was listed in
10 various law enforcement systems as an alias for Mr. Christensen. Consequently, when
11 LESA ran a warrants check on Mr. Hendrickson, the check revealed an outstanding
12 warrant for "Robert Christensen, aka Kevin Hendrickson."¹ This warrant had a "no bail
13 hold" on it, meaning that Mr. Hendrickson could not be released on the outstanding
14 warrant charge prior to appearing before a judge. *See* Dkt. 141-3 at 7 (deposition of
15 Officer Budinich).

18 ¹ According to Defendants, when a police officer wants to check for outstanding warrants
19 for an individual, he or she may contact LESA by radio and provide the Records Specialist with
20 the person's full name and date of birth. Dkt. 157 at 2 (declaration of Bonnie Voegele, Acting
21 Assistant Director for the Records Division of LESA). The specialist will then run this
22 information through the state ACCESS system, which pulls information from different
23 databases. The ACCESS system will provide a list of possible records relating to the person,
24 based on the name entered, including all aliases associated with that name. In this case, Thurston
25 County officials had entered Mr. Hendrickson's name and date of birth as an alias for Robert
26 Christensen in WACIC, one of the databases from which ACCESS draws information. *Id.* at 7.
27 Thurston County also sent a correct copy of the "teletype" warrant to LESA, which is submitted
28 to LESA to "confirm the validity of a warrant at the time a possible subject is identified." *Id.* at 5
and 9. The teletype warrant for Mr. Christensen did not include any aliases. However,
Defendants maintain that the teletype warrant issued for Mr. Christensen was "not the actual
warrant issued by the court . . . [and did] not contain or reflect all of the information listed in
ACCESS." *Id.* at 5 (emphasis removed). In contrast, Defendants maintain that the WACIC
record did reflect the information inputted by Thurston County officials for this warrant.

1 After the arrest, Officer Budinich transported Mr. Hendrickson to the Pierce
2 County Jail, where he was booked on two charges: possession of stolen property and the
3 outstanding Thurston County warrant.

4 According to Mr. Hendrickson, Officer Budinich never asked Mr. Hendrickson
5 whether his name was Robert Christensen or otherwise inquired as to whether Mr.
6 Hendrickson was providing his correct identity. Mr. Hendrickson further maintains that
7 Officer Budinich later received a copy of Mr. Christensen's warrant, and that this warrant
8 did not have any information about Mr. Hendrickson, including Mr. Hendrickson's name,
9 date of birth, or physical description. Apparently, Mr. Hendrickson is referring to the
10 "teletype" warrant that lists only Robert Christensen's name. *See* Dkt. 157 at 9.

11 In his deposition, Officer Budinich stated that he couldn't recall whether he
12 received a copy of the warrant while he was at the Pierce County Jail, but that he "must
13 have" seen a copy of the warrant because he booked Mr. Hendrickson under the
14 outstanding warrant charge. Dkt. 145-2 at 6. Officer Budinich testified that upon reaching
15 the jail after arresting a suspect on an outstanding warrant, he normally would contact
16 LESA, which would fax him a copy of the warrant to the jail. Once he obtains the fax,
17 Officer Budinich said that he normally "hands [the faxed copy of the warrant] over to the
18 jail staff." He further testified that he booked Mr. Hendrickson under the warrant because
19 "[Mr. Hendrickson] was the name on the warrant," and "as far as [Officer Budinich]
20 knew, that was [Mr. Hendrickson's] name on the warrant or one of his aliases." *Id.*
21 Officer Budinich's incident report indicated that the warrant was a no-bail hold warrant.
22 *Id.* at 7.

23 Officer Budinich also stated that he normally looks through the jail booking
24 system to confirm the identity of a suspect whom he arrests on an outstanding warrant. He
25 stated, "as I recall, there was a photo of Mr. Hendrickson . . . [which included] a date of
26 birth" in the jail booking system.

1 On August 24, 2004, Mr. Hendrickson was charged with possession of stolen
2 property in Pierce County Superior Court and bail was set at \$10,000. Mr. Hendrickson
3 maintains that he attempted to make bail that day by posting \$1,000 with a bail
4 bondsman, but was refused bail because the warrant out of Thurston County had a no-bail
5 hold on it. According to Mr. Hendrickson, the bail bondsmen whom he and others
6 contacted were concerned that if Mr. Hendrickson posted bail in Pierce County, and was
7 subsequently sent to Thurston County to face the warrant charge, he could miss his court
8 date in Pierce County. Mr. Hendrickson contends that because of this possible scenario,
9 the bondsmen did not “want to get [their] hands involved.”² For the next 11 days, Mr.
10 Hendrickson remained in Pierce County Jail, while he and others attempted to figure out a
11 way to post the full bail amount. On or before September 3, 2004, Mr. Hendrickson was
12 able to come up with \$10,000 to post bail on the possession of stolen property charge, and
13 was released from Pierce County Jail.

14 On September 3, 2004, Mr. Hendrickson was transferred to Thurston County Jail
15 because of the outstanding warrant charge. Officials there fingerprinted Mr. Hendrickson
16 and determined that he was not Robert Christensen or the subject of the bench warrant.
17 Mr. Hendrickson was then released from Thurston County Jail.

18 Pierce County prosecutors later amended the possession of stolen property charge
19 to include multiple counts of identity theft based on evidence found in Leo Brutsche’s
20 trailer. Mr. Hendrickson was eventually convicted on three counts of identity theft and
21 was sentenced to 48 months in prison.

22 **B. SEARCH AND SEIZURE OF PROPERTY**

23 After the arrest, Officer Romaine began running the license plates and VIN
24 numbers on about a half dozen vehicles in the vacant lot to determine whether they were
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26 ² Mr. Hendrickson did not provide any evidence of these alleged statements by the
27 bondsmen, other than Mr. Hendrickson’s own deposition.
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1 reported stolen. He then went over to Mr. Hendrickson's truck due to one of the reporting
2 victims informing him that Mr. Hendrickson got out of the truck. Officer Romaine ran the
3 license plate, which came back registered to Mr. Hendrickson, and was not reported
4 missing or stolen. The year, make, model, and color of the truck registered under the
5 license plate matched the description of the truck. Officer Romaine ran the same check on
6 the license plate of the Pontiac, and that car also was not reported missing or stolen.
7 Presumably, the Pontiac did not come back registered to Mr. Hendrickson because Mr.
8 Hendrickson maintains that he had just purchased the vehicle and had not yet filed the
9 registration paperwork with DOL. In addition, the Court also presumes that the car hauler
10 would not have come back registered to Mr. Hendrickson. Indeed, Defendants provided
11 evidence that the tow dolly³ was reported stolen by U-Haul.

12 In any event, Officer Romaine then compared the VIN number on the truck to the
13 VIN number he obtained from the registered license plate of the truck. The officer was
14 able to view the VIN by looking through the truck's front window. He discovered that the
15 VIN on the truck did not match the VIN registered with the truck license plate. Officer
16 Romaine then ran a search on the VIN affixed to the truck. The search did not indicate a
17 missing or stolen report; instead the search indicated that the listed registered owners
18 under the VIN on the truck were people in Texas, and not Mr. Hendrickson.

19 Officer Romaine also searched the inside of the truck without first obtaining a
20 search warrant. According to Officer Romaine, he conducted this search because the truck
21 "had switched plates . . . [and] it's [his] responsibility to identify who owns [the truck]."
22 Officer Romaine maintains that he did not "personally inventory" the truck. He maintains
23 that he did not search the Pontiac.

24 Officer Romaine had the truck, Pontiac, and car hauler impounded because he
25 believed that the truck had "switched plates." The Pontiac and car hauler were impounded

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27 ³ Defendants use "tow dolly" interchangeably with "car hauler."
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1 because they were attached to the truck. Defendants maintain that the truck, Pontiac, and
2 car hauler were impounded for “further criminal investigation.” Dkt. 129 at 5. A police
3 hold was placed on all three vehicles, meaning that the vehicles could not be released
4 until the hold was lifted.

5 According to Defendants, the Tacoma Police Department has a policy whereby all
6 police reports regarding impounds and vehicle crimes are electronically routed to the
7 sergeant in charge of property crimes. The sergeant then evaluates the case and decides
8 whether to assign it to a detective, based on “solvability factors” and available resources.
9 If the case is not assigned to a detective, it becomes a “file case” and the police hold on
10 the vehicles is released. Defendants maintain that the police hold on the vehicles was
11 lifted about a month after the impound.

12 After the police hold was lifted, the tow company Gene’s Towing⁴ began the
13 process of returning the vehicles to their lawful owners. At some point during this
14 process, Gene’s discovered that the tow dolly had been stolen from U-Haul. Gene’s
15 notified U-Haul, which subsequently came and recovered the tow dolly. Gene’s also sent
16 notices to the registered owners of the truck in Texas based on registration records
17 associated with the VIN affixed to the truck.⁵ Gene’s also sent notices to the registered
18 owners of the Pontiac. Gene’s did not send any notice to Mr. Hendrickson, because
19 Defendants contend that, according to DOL and LESA records, Mr. Hendrickson “was
20 not the legal or registered owner” of any of the impounded vehicles. Dkt. 129 at 7.
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23 ⁴ Gene’s Towing is a subcontractor of Bill’s Towing, which has a contract with the City
24 of Tacoma. Dkt. 170, 7-8 (Declaration of Elizabeth Myers of Gene’s Towing). Gene’s provides
towing and impounding services for the city. *Id.*

25 ⁵ According to Ms. Myers, Gene’s Towing sends notices only to registered owners of the
26 VIN affixed to impounded vehicles, and not to registered owners of license plates attached to
27 these vehicles “[b]ecause the VIN number is the permanent number on the vehicle.” Dkt. 170 at
28 6. She also maintains that when the DOL processes an abandoned vehicle report, it only runs the
VIN number, and not the registered plate attached to a vehicle. *Id.*

1 Mr. Hendrickson maintains that on a couple occasions, he contacted Gene's to
2 recover the vehicles and was told that the vehicles could not be released because of a
3 police hold.

4 It is not clear from the record whether the City or Gene's conducted an inventory
5 of any of the vehicles, and if an inventory was conducted, whether they located the
6 registration paperwork for the Pontiac which Mr. Hendrickson claims to have placed in
7 the glove box of the truck. It is also unclear whether any of Mr. Hendrickson's personal
8 property was located in the truck or Pontiac. Mr. Hendrickson maintains that he had
9 personal property inside the truck that was never returned to him, including his tools,
10 eyeglasses, laptop, and camera. Dkt. 144 at 3.

11 Defendants maintain that the individuals who were sent notices did not come to
12 recover the vehicles. Defendants further contend that "pursuant to state law," the truck
13 and Pontiac were deemed abandoned and were sold at an auction.

14 **C. STATE AND LOCAL LAW**

15 Under Washington state law, an application for a certificate of ownership of a
16 automobile must contain "the proper vehicle identification number." RCW
17 46.12.030(1)(a). In certain situations, such as when a vehicle has been salvaged, a
18 physical examination may be required prior to issuance of a certificate of ownership. *See*
19 *generally* RCW 46.12.030(3). "No vehicle license number plates or certificate of license
20 registration . . . may be issued or furnished by [DOL] unless the applicant, at the same
21 time, makes *satisfactory* application for a certificate of ownership." RCW 46.12.020(1)
22 (emphasis added). "Registered owner" means the person whose lawful possession of a
23 vehicle was most recently recorded with the DOL. RCW 46.04.460.

24 Under state law, a tow agency is required to notify local law enforcement when it
25 has impounded a vehicle, and local law enforcement is required to provide to the tow
26 agency the "address of the legal and registered owners of the vehicle, and the registered
27 owner of any personal property registered or titled with the department that is attached or
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1 contained in or on the impounded vehicle, the vehicle identification number, and any
2 other necessary, pertinent information.” RCW 46.55.100(1). State law also requires tow
3 agencies to provide notice to owners of vehicles that have been impounded. *See* RCW
4 46.55.110.

5 Under the Tacoma Municipal Code, a tow agency is required to mail notice to the
6 “last known and legal owners of the vehicles, as may be disclosed by the vehicle
7 identification number, and as provided by [DOL].” TMC 11.05.702(A). “The notice shall
8 contain the full particulars of the impoundment, redemption, and opportunity for hearing
9 to contest the propriety of the impoundment.” *Id.*

10 **II. PROCEDURAL BACKGROUND**

11 On July 27, 2006, Mr. Hendrickson filed a pro se civil rights complaint. Dkt. 5. He
12 later obtained counsel. Several Defendants in this action have been dismissed, and the
13 City of Tacoma, and Officers Budinich and Romaine are the only remaining Defendants.

14 On October 20, 2007 Mr. Hendrickson filed a third amended complaint, and
15 alleged fourteen counts. Dkt. 60. The following counts, numbered as they are in the
16 complaint, apply to all remaining defendants:

17 1. Unreasonable seizure in violation of the Fourth, Fifth, and Fourteenth
18 Amendments of the United States Constitution, as secured by 42 U.S.C. § 1983, for
19 incarcerating Plaintiff without bail for the outstanding bench warrant;

20 2. Violation of the Fourth, Fifth, and Fourteenth Amendments, as secured by
21 42 U.S.C. § 1983, for failing to ensure that Plaintiff was the individual wanted in
22 the arrest warrant;

23 3. Violation of the Fourth, Fifth, and Fourteenth Amendments, as secured
24 by 42 U.S.C. § 1983, for illegally searching and seizing Plaintiff’s personal
25 property without a warrant;
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1 4. Violation of the Fourth, Fifth, and Fourteenth Amendments, as secured by
2 42 U.S.C. § 1983, for failing to return Plaintiff's personal property that was seized
3 during his arrest;

4 11. Negligence for all the actions and conduct described in the complaint;

5 12. False arrest and false imprisonment; and

6 14. Conversion for depriving Plaintiff of property.

7 *Id.*

8 Counts 5, 6, 7, 8, and 9 allege "municipal liability," and apply only to the City of
9 Tacoma. These counts appear to relate to the Section 1983 claims, and allege that the City
10 of Tacoma developed, maintained, and/or promoted policies that allowed officers to
11 violate Plaintiff's constitutional rights as alleged in counts 1, 2, 3, and 4. Count 10 alleges
12 negligent hiring, training and supervision. The remaining count, 13, alleges that the City
13 of Tacoma is liable for the officers' actions based on "responent [sic] superior."

14 Defendants have filed five motions for summary judgment. Defendants first move
15 to dismiss Plaintiff's claims that challenge the legality of his arrest based on collateral
16 estoppel. Dkt. 124. Defendants' second motion seeks dismissal of Plaintiff's Section 1983
17 claims against the City of Tacoma based on lack of municipal liability. Dkt. 129.
18 Defendants' third motion seeks dismissal of Plaintiff's Section 1983 claims against
19 Officers Budinich and Romaine on the basis of qualified immunity. Dkt. 130. Defendants'
20 fourth motion seeks dismissal of Plaintiff's claim for punitive damages. Dkt. 132.
21 Defendants' final motion seeks dismissal of Plaintiff's state tort and negligence claims.
22 Dkt. 137.

23 Plaintiff filed a motion for partial summary judgment, and moves the Court to
24 conclude as a matter of law that Officer Romaine and the City of Tacoma violated his due
25 process rights under the Fourteenth Amendment by depriving him of pre- and post-
26 impoundment notices. Dkt. 134.

1 Plaintiff stipulates to the dismissal of his negligent hiring and negligent
2 supervision claims. Dkt. 144 at 23.

3 III. LEGAL STANDARDS

4 A. SUMMARY JUDGMENT STANDARD

5 Summary judgment is proper only if the pleadings, the discovery and disclosure
6 materials on file, and any affidavits show that there is no genuine issue as to any material
7 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56©).
8 The moving party is entitled to judgment as a matter of law when the nonmoving party
9 fails to make a sufficient showing on an essential element of a claim in the case on which
10 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
11 (1985). There is no genuine issue of fact for trial where the record, taken as a whole,
12 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
13 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
14 present specific, significant probative evidence, not simply “some metaphysical doubt”).
15 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if
16 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
17 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
18 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
19 626, 630 (9th Cir. 1987).

20 The determination of the existence of a material fact is often a close question. The
21 Court must consider the substantive evidentiary burden that the nonmoving party must
22 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
23 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
24 issues of controversy in favor of the nonmoving party only when the facts specifically
25 attested by that party contradict facts specifically attested by the moving party. The
26 nonmoving party may not merely state that it will discredit the moving party’s evidence at
27 trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elec.*
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1 *Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*). Conclusory, nonspecific
2 statements in affidavits are not sufficient, and missing facts will not be presumed. *Lujan*
3 *v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

4 **B. SECTION 1983**

5 Section 1983 is a procedural device for enforcing constitutional provisions and
6 federal statutes; the section does not create or afford substantive rights. *Crumpton v.*
7 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). In order to state a claim under 42 U.S.C. §
8 1983, plaintiffs must demonstrate that (1) the conduct complained of was committed by a
9 person acting under color of state law and that (2) the conduct deprived a person of a
10 right, privilege, or immunity secured by the Constitution or by the laws of the United
11 States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by*
12 *Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate remedy only if
13 both elements are satisfied.

14 Analysis of a procedural due process claim under Section 1983 involves two
15 questions: (1) whether the plaintiff has been deprived of a life, liberty, or property interest
16 that is constitutionally protected, and, if so, (2) whether the “procedures attendant upon
17 that deprivation were constitutionally sufficient.” *Ky. Dep’t of Corr. v. Thompson*, 490
18 U.S. 454, 460 (1989).

19 If a plaintiff establishes that he or she was deprived of a protected interest, a court
20 should apply the balancing test as set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976),
21 in order to determine whether the procedures were constitutionally sufficient:

22 [I]dentification of the specific dictates of due process generally requires
23 consideration of three distinct factors: First, the private interest that will be
24 affected by the official action; second, the risk of an erroneous deprivation
25 of such interest through the procedures used, and the probable value, if any,
26 of additional or substitute procedural safeguards; and finally, the
27 Government’s interest, including the function involved and the fiscal and
28 administrative burdens that the additional or substitute procedural
requirement would entail.

Oviatt v. Pearce, 954 F.2d 1470, 1475-76 (9th Cir. 1992) (*quoting Mathews*, 425 U.S. at
335).

1 **C. QUALIFIED IMMUNITY**

2 Defendants in a Section 1983 action are entitled to qualified immunity from
3 damages for civil liability if their conduct does not violate clearly established statutory or
4 constitutional rights of which a reasonable person would have known. *Harlow v.*
5 *Fitzgerald*, 457 U.S. 800, 818 (1982). The existence of qualified immunity generally
6 turns on the objective reasonableness of the actions, without regard to the knowledge or
7 subjective intent of the particular official. *Id.* at 819.

8 In analyzing a qualified immunity defense, the Court must determine: (1) whether
9 a constitutional right would have been violated on the facts alleged, taken in the light
10 most favorable to the party asserting the injury; and (2) whether the right was clearly
11 established when viewed in the specific context of the case. *Saucier v. Katz*, 121 S. Ct.
12 2151, 2156 (2001). “The relevant dispositive inquiry in determining whether a right is
13 clearly established is whether it would be clear to a reasonable officer that his conduct
14 was unlawful in the situation he confronted.” *Id.* “This is not to say that an official action
15 is protected by qualified immunity unless the very action in question has previously been
16 held unlawful . . . but it is to say that in the light of pre-existing law the unlawfulness
17 must be apparent.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (citations omitted).

18 In the context of a warrantless search, a police officer may assert qualified
19 immunity even when probable cause is absent, so long as the officer was objectively
20 reasonable in concluding that probable cause existed. *Zellner v. Summerlin*, 494 F.3d 344,
21 370 (2d Cir. 2007); *see also Anderson v. Creighton*, 483 U.S. 635, 641 (1987) (if there is
22 a legitimate question as to the unlawfulness of the conduct, qualified immunity applies);
23 *see also Hunter v. Bryant*, 502 U.S. 224, 227 (1991).

24 **D. MUNICIPAL LIABILITY**

25 The language of Section 1983 is expansive and does not expressly incorporate
26 common law immunities. *Owen v. City of Independence, Mo.*, 445 U.S. 622, 637 (1980).
27 However, municipalities and other local governing bodies, such as school districts, are
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1 subject to suit under Section 1983. *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690
2 (1978); *Lytle v. Carl*, 382 F.3d 978, 982 (9th Cir. 2004). Municipalities are not liable
3 merely for employing tortfeasors, and respondeat superior is an insufficient basis for
4 establishing municipal liability. *Monell*, 436 U.S. at 690. Rather, a plaintiff must establish
5 that a policy or custom of the municipality caused the constitutional injury. *Leatherman v.*
6 *Tarrant County Narcotics Intelligence & Coordination*, 507 U.S. 163, 166 (1993). This
7 requirement distinguishes acts of the municipality from acts of municipal employees.
8 *Christie v. Iopa*, 176 F.3d 1231, 1235 (9th Cir. 1999).

9 Municipal liability may be based on an express municipal policy, such as an
10 ordinance, regulation, or policy statement. *City of St. Louis v. Praprotnik*, 485 U.S. 112,
11 121 (*citing Monell*, 436 U.S. at 690). It may also attach where the municipality maintains
12 a “widespread practice that, although not authorized by written law or express municipal
13 policy, is ‘so permanent and well-settled as to constitute a custom or usage’ with the force
14 of law.” *Id.* at 127 (*quoting Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167-68 (1970)).

15 However, “the existence of a policy, without more, is insufficient to trigger local
16 government liability under Section 1983.” *Oviatt v. Pearce*, 954 F.2d 1470, 1477 (9th Cir.
17 1992) (*quoting City of Canton*, 489 U.S. 378, 388-89 (1989)). Before a local entity may
18 be held liable for failing to preserve a constitutional right, a plaintiff must demonstrate
19 that the official policy “evidences a ‘deliberate indifference’” to his or her constitutional
20 rights. *Id.* This occurs when it is so “obvious” that the current procedure is likely to result
21 in the violation of constitutional rights, that the policymakers can be reasonably said to
22 have been indifferent to the need to craft a policy with the requisite constitutional
23 safeguards. *Id.* “Whether a local government entity has displayed a policy of deliberate
24 indifference is generally a question for the jury.” *Id.* (*citing Davis v. Mason County*, 927
25 F.2d 1473, 1482 (9th Cir. 1991)).

26 There also must be sufficient causation between the policy and the violation of a
27 plaintiff’s constitutional right. *See Bd. Of County Comm’rs v. Brown*, 520 U.S. 397, 400
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1 (1996) (local government entity is not liable unless “deliberate action attributable to the
2 municipality itself is the ‘moving force’ behind the plaintiff’s deprivation of federal
3 rights”).

4 **IV. DISCUSSION**

5 **A. PLAINTIFF’S SECTION 1983 CLAIMS**

6 Mr. Hendrickson and Defendants agree that Defendants acted under the color of
7 state law with respect to the arrest, booking, search and initial seizure of the vehicles. The
8 parties dispute whether Mr. Hendrickson was deprived of any constitutional rights. The
9 Court will first address the issue of whether Mr. Hendrickson was deprived of a
10 constitutional right, and then address the issue of whether qualified immunity applies as
11 to Officers Budinich and Romaine, and finally, whether the City may be held liable based
12 on municipal liability.

13 **1. Charge and Booking for the Outstanding Warrant**

14 It is not entirely clear from the complaint whether Mr. Hendrickson is alleging a
15 violation of his constitutional rights based on his arrest for the outstanding warrant, or if
16 this allegation instead arises solely from Officer Budinich’s alleged failure to remove the
17 outstanding warrant charge when he booked Mr. Hendrickson at Pierce County Jail. In his
18 response to Defendants’ first motion for summary judgment, Mr. Hendrickson maintains
19 that he is not challenging his arrest for possession of stolen property, but he is challenging
20 Officer Budinich’s “wrongful[] charging [of] Hendrickson for an outstanding bench
21 warrant.” Dkt. 140 at 1.⁶ The Court will address two aspects of Officer Budinich’s
22 “charging” of Mr. Hendrickson for the outstanding warrant: (1) the arrest of Mr.

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25 ⁶ By stipulating that he is not challenging the arrest based on the possession of stolen
26 property charge, Defendants’ motion based on collateral estoppel (Dkt. 124) necessarily prevails,
27 to the extent that motion seeks to preclude Mr. Hendrickson from alleging claims based on that
28 charge. Based in part on the fact that the arrest and booking was supported by probable cause for
the possession of stolen property charge, Mr. Hendrickson’s claims arising from the arrest and
booking also fail as discussed in this order.

1 Hendrickson and (2) Officer Budinich's act of booking him at the Pierce County Jail after
2 allegedly receiving a copy of Mr. Christensen's arrest warrant.

3 Probable cause is a complete defense to a Section 1983 claim brought under the
4 Fourth Amendment. *See Weyant v. Okst*, 101 F.3d 845, 852 (2d Cir. 1996). Probable
5 cause exists when "the facts and circumstances within the officer's knowledge . . . are
6 sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the
7 circumstances shown, that the suspect has committed, is committing, or is about to
8 commit an offense." *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979). An arrest is
9 justified so long as the police officer has probable cause to arrest the individual "as to any
10 offense that could be charged under the circumstances." *See, e.g., Barna v. City of Perth*
11 *Amboy*, 42 F.3d 809, 819 (3rd Cir. 1994). "Probable cause can be determined as a matter
12 of law 'if there is no dispute as to the pertinent events and the knowledge of the
13 officers.'" *Carson v. Lewis*, 35 F. Supp. 2d 250, 257 (E.D. N.Y. 1999) (*quoting Andersen*,
14 483 U.S. 641)

15 Mr. Hendrickson's claim that Officer Budinich violated his constitutional rights by
16 arresting him for the outstanding warrant fails. There is no genuine dispute of fact that the
17 warrant issued for Mr. Christensen included Mr. Hendrickson's name as an alias.
18 Moreover, the parties agree that Officer Budinich had independent probable cause to
19 arrest Mr. Hendrickson based on the possession of stolen property charge.

20 Mr. Hendrickson also maintains that Officer Budinich violated his liberty interests
21 under the Constitution by failing to remove the outstanding warrant charge upon booking
22 Mr. Hendrickson at the Pierce County Jail. He maintains that he was unable to post bail
23 for the possession of stolen property charge for 11 days because of the no-bail hold on the
24 outstanding warrant charge out of Thurston County.

25 The Court notes that Mr. Hendrickson is not arguing that the outstanding warrant
26 charge enhanced the bail set by Pierce County Superior Court; that bail, set at \$10,000,
27 was based on the possession of stolen property charge. Rather, Mr. Hendrickson is
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1 arguing that a constitutional violation occurred because the outstanding warrant charge
2 out of Thurston County caused bail bondsmen to refuse him a bond to assist him in
3 posting bail out of fear that Mr. Hendrickson would miss his court date for the possession
4 of stolen property charge.⁷

5 Mr. Hendrickson has offered no legal authority that supports his contention that a
6 constitutional violation occurs when a police officer lawfully arrests and books an
7 individual for one crime, but also erroneously charges the individual with an outstanding
8 warrant, and this erroneous charge influences third-party bail bondsmen to refuse to issue
9 a bond to assist the individual in posting bail on the lawful charge. The Court is not
10 persuaded by this argument and this claim must fail.

11 This claim also fails to the extent Mr. Hendrickson bases the alleged constitutional
12 violation on the delay in obtaining his release from the time he posted bail on the
13 possession of stolen property charge to the time he was released by Thurston County
14 officials for the outstanding warrant charge. The Supreme Court's decision in *Baker v.*
15 *McCollan*, 443 U.S. 137 (1979), controls here.

16 In *Baker*, the respondent's brother had used the respondent's name when he was
17 arrested. The respondent was arrested on a facially valid outstanding warrant that was
18 intended to be issued for the brother. The respondent remained in jail for about three days
19 before being released. The Supreme Court held that there was no constitutional violation
20 based on the arrest and booking for the erroneous warrant.

21 Similarly, there was no constitutional violation here. Mr. Hendrickson alleged that
22 after he was booked at Thurston County, he was quickly released. Mr. Hendrickson did
23 not appear to have spent a significant period of time in Thurston County jail prior to the
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25 ⁷ The Court also notes that the only evidence offered in support of the bondsmen's
26 alleged refusal to issue the bond are Mr. Hendrickson's own statements, and he has offered no
27 exception to the hearsay rule that makes these statements admissible. *See* Fed R. Civ. P. 56(e)(1)
28 ("[a] supporting or opposing affidavit must . . . set out facts that would be admissible in
evidence").

1 time the error was discovered and he secured his release. The eleven days Mr.
2 Hendrickson spent in Pierce County Jail did not arise out of the outstanding warrant
3 charge because Pierce County set bail based solely on the possession of property charge.

4 Officer Budinich is also entitled to qualified immunity because no clearly
5 established right was violated. Even if the arrest and booking on the warrant charge had
6 violated Mr. Hendrickson's constitutional rights, a reasonable officer in the officer's
7 position would not have believed a right was violated, especially because there was
8 independent probable cause to charge and book Mr. Hendrickson for possession of stolen
9 property.

10 In addition, the City cannot be held liable because Mr. Hendrickson has not
11 identified any policy that was the "moving force" behind the alleged constitutional
12 deprivation.

13 For these reasons, this claim must be dismissed as to all Defendants.

14 **2. Search of Pickup Truck**

15 Mr. Hendrickson moves the Court to find that, as a matter of law, Officer Romaine
16 violated his Fourth Amendment rights by conducting the warrantless search of the truck.
17 He argues that the officer acted without probable cause because the vehicles had not been
18 reported stolen, and that Officer Romaine acted improperly by searching the truck for
19 evidence of ownership because "he already had that information." Dkt. 134 at 20.
20 Defendants have also filed a motion for summary judgment, and move the Court to
21 dismiss this claim. Dkt.130.⁸

22 The Court concludes that no constitutional violation occurred as a result of the
23 search of Mr. Hendrickson's truck. There is no dispute that the officers lawfully arrested
24 Mr. Hendrickson for possession of the stolen trailer. It is undisputed that the VIN affixed
25 to the actual pickup truck was not registered to Mr. Hendrickson. It is also undisputed that

27 ⁸Defendants allege that Mr. Hendrickson lacks standing. For purposes of this motion
28 only, the Court concludes that Mr. Hendrickson has standing. *See* subsection (5), *infra*.

1 Officer Romaine did not conduct a search of the vehicle in order to observe the VIN; he
2 observed the VIN from the outside of the vehicle. Further, Officer Romaine knew that
3 Mr. Hendrickson had driven the truck based on statements from the Brutsches. After
4 discovering the discrepancy between the license plate and the VIN, it was entirely
5 reasonable for Officer Romaine to conduct a search of the vehicle for evidence of
6 ownership. *See United States v. Jamerson*, 549 F.2d 1263, 1271 (9th Cir. 1977)
7 (warrantless search permissible where police intrusion into a vehicle is necessary to
8 safeguard an owner's property); *see also U.S. v. Brown*, 535 F.2d 424, 428 (8th Cir. 1976)
9 (observing that VIN numbers did not match on car following defendant's arrest on
10 unrelated charge, officers had probable cause to believe the car was stolen and seized the
11 vehicle).

12 Mr. Hendrickson's apparent contention that the officer acted unreasonably in
13 suspecting that Mr. Hendrickson did not own the truck is disingenuous, especially in light
14 of the fact that Mr. Hendrickson had previously been charged of a very similar crime as
15 suspected here – in 1998, Mr. Hendrickson was convicted of possession of stolen
16 property, arising from charges that he had switched VIN plates on stolen vehicles. Dkt.
17 125-5, 12-26. Mr. Hendrickson's other arguments in support of his motion for summary
18 judgment are also unavailing. First, Mr. Hendrickson offers no legal authority that
19 supports his contention that a vehicle must be reported stolen to give rise to probable
20 cause that a vehicle does not belong to the individual driving the vehicle. Second, as to
21 Mr. Hendrickson's claim that the search for evidence of ownership was unreasonable, it
22 may not have been sufficient for Officer Romaine to rely solely on the report that
23 indicated the true owner of this vehicle resided in Texas because there was a discrepancy
24 between the license plate and the VIN. Officer Romaine acted properly by searching for
25 evidence to resolve the discrepancy and determine the lawful owner of the truck. Third,
26 Mr. Hendrickson's contention that Officer Romaine should have asked Mr. Hendrickson
27 about the discrepancy in the VIN and the license plate to resolve the issue of ownership is
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1 devoid of merit. In light of the fact that Mr. Hendrickson had just been arrested for
2 possession of the stolen trailer, Officer Romaine can hardly be expected to rely on Mr.
3 Hendrickson's own statements in order to determine the truck's rightful owner.

4 Officer Romaine is also entitled to qualified immunity because no clearly
5 established constitutional right was violated. Even if he conducted the search without
6 probable cause, or if the community caretaking function did not apply, the Court
7 concludes that under these circumstances, a reasonable officer in his position would not
8 have believed the search violated Mr. Hendrickson's constitutional rights.

9 In addition, the City cannot be held liable because Mr. Hendrickson has not
10 identified any policy that was the "moving force" behind the alleged constitutional
11 deprivation.

12 Accordingly, this claim is dismissed as to all Defendants.

13 **3. Initial Impound of Truck, Pontiac, and Car Hauler**

14 Mr. Hendrickson also moves the Court to find, as a matter of law, that Defendants
15 illegally seized his property by impounding the truck, Pontiac, and car hauler. Mr.
16 Hendrickson maintains that Defendants violated his constitutional rights by impounding
17 the vehicles without providing pre-impoundment notice. Dkt. 134. Defendants move to
18 dismiss this claim. Dkt. 130.

19 Officer Romaine's impounding of these vehicles did not violate Mr. Hendrickson's
20 constitutional rights. Mr. Hendrickson's arguments focus primarily on the issue of
21 whether the police are required to provide pre-impound notice to an owner of a vehicle
22 when a vehicle is impounded because of "switched plates." Mr. Hendrickson
23 mischaracterizes the impounding of the truck as being based solely on a "traffic
24 infraction." While Officer Romaine testified that he had the vehicles impounded based on
25 "switched plates," he also testified that ownership of the vehicles had not been established
26 and that Mr. Hendrickson had already been arrested for possession of the stolen trailer.
27 Defendants contend that the seizure was proper because Mr. Hendrickson had already
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1 been arrested for possession of a stolen trailer, and because the VIN affixed to the truck
2 was not registered to Mr. Hendrickson. Additionally, neither the Pontiac nor the car
3 hauler came back registered to Mr. Hendrickson.

4 Mr. Hendrickson has not demonstrated that he was entitled to pre-impoundment
5 notice. There is no dispute that, at the time of the impound, none of the actual VIN
6 numbers were registered to Mr. Hendrickson. In addition, based on the arrest for
7 possession of the stolen trailer, as well as the discrepancy in the registration of the truck,
8 Officer Romaine had probable cause to believe that the truck, Pontiac, and car hauler
9 were not owned by Mr. Hendrickson and may have been stolen. *See Brown, supra*.
10 Alternatively, the officer's seizure was proper in order to safeguard property that may
11 have belonged to a third party. *See Jamerson, supra*.

12 Officer Romaine is also entitled to qualified immunity for the same reason as set
13 out in subsection (2), *supra*.

14 Because all claims based on Section 1983 against Officers Budinich and Romaine
15 are dismissed, Mr. Hendrickson's claim for punitive damages necessarily fails. This claim
16 is without merit, as there is no evidence supporting Mr. Hendrickson's claim that the
17 officers acted with "evil motive or intent . . . [or acted in] reckless or callous indifference"
18 to his constitutional rights. *See* Dkt. 153 (*quoting Smith v. Wade*, 461 U.S. 30, 156
19 (1983)).

20 In addition, the City cannot be held liable because Mr. Hendrickson has not
21 identified any policy that was the "moving force" behind the alleged constitutional
22 deprivation.

23 Accordingly, Mr. Hendrickson's claims alleging a violation of his constitutional
24 rights based on the initial impounding of the vehicles fail as to all Defendants.

25 **4. Sale of Vehicles**

26 Mr. Hendrickson maintains that he was never provided notice to afford him the
27 opportunity to challenge the validity of the impoundment, or to redeem his vehicles. He
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1 now moves the Court to find, as a matter of law, that the City violated his right to post-
2 impoundment notice in violation of the Due Process Clause and the Fourteenth
3 Amendment. Dkt. 134. Mr. Hendrickson maintains that TMC 11.05.702 is
4 unconstitutional because the ordinance only required the towing agency to provide post-
5 impoundment notices to the “last known and legal owners as may be disclosed by the
6 vehicle identification number,” but not to an individual who has registered a license plate
7 that is attached to an impounded vehicle. The City opposes Mr. Hendrickson’s motion,
8 and contends that Gene’s was not required to provide post-impoundment notice, and in
9 any event, Mr. Hendrickson failed to establish that Gene’s relied on TMC 11.05.702 in
10 this alleged deprivation. The City also moves for summary judgment on this claim. Dkt.
11 129.

12 “Loss of the use and enjoyment of a car deprives the owner of a property interest
13 that may be taken from him only in accordance with the Due Process Clause.” *Stypmann*
14 *v. City and County of San Francisco*, 557 F.2d 1338, 1342 (9th Cir. 1977). In procedural
15 due process claims, the deprivation of property is not itself unconstitutional; rather, what
16 is unconstitutional is the deprivation of a property interest without due process of law.
17 *Zinerman v. Burch*, 494 U.S. 113, 125 (1990). The Constitution typically requires some
18 kind of hearing before a state actor deprives an individual of property. *Id.* at 127.

19 The Court first addresses the issue of standing. The City argues that Mr.
20 Hendrickson does not have standing because he had no ownership interest in the vehicles.
21 The Court concludes that for the purposes of the pending motions only, Mr. Hendrickson
22 has standing because there is a dispute as to whether he has such an ownership interest.
23 There should not be a bright-line rule requiring a plaintiff to fully comply with DOL
24 registration requirements prior to obtaining standing. If this were the case, a good faith
25 buyer of a used vehicle who had not had the opportunity to register a vehicle prior to an
26 impoundment would not have standing to file suit to recover his or her vehicle. The same
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1 would hold true for a purchaser of a vehicle who submits registration paperwork
2 containing good-faith clerical errors.

3 The Court declines Mr. Hendrickson's invitation to find, as a matter of law, that
4 the City violated his right to post-impoundment notice. Mr. Hendrickson has not
5 demonstrated that he is the true owner of the truck, Pontiac, or car hauler. Registration
6 paperwork that does not include the proper VIN number is not valid proof of ownership.
7 *See* RCW 46.12.030(1)(a) and RCW 46.12.020(1). Quite plainly, merely attaching a
8 license plate to a vehicle, as the City is apparently alleging here, would not constitute
9 ownership as a matter of law. With regard to the Pontiac and car hauler, Mr. Hendrickson
10 has not directed the Court to any proof of ownership in the record, other than his own
11 statements.

12 Mr. Hendrickson's claim that the City violated his constitutional rights under
13 Section 1983 fails. Even if Mr. Hendrickson could establish that he owned the vehicles,
14 he has failed to demonstrate that Gene's relied on TMC 11.05.702 when it sent notices
15 only to the owners registered to the vehicle VIN numbers. Gene's representative stated
16 that Gene's relied on state law, and Mr. Hendrickson has provided no evidence that
17 contradicts this statement or demonstrates that Gene's relied on the local ordinance.
18 Plaintiff cites Gene's representative Elizabeth Myer's deposition, where she stated that
19 Gene's sends out notices based on VIN number registration, as contradicting her later
20 statement that Gene's was following state law rather than local ordinance. The Court does
21 not find these statements to be contradictory.

22 Even if Gene's had not complied with state law, Plaintiff has not provided legal
23 authority that such noncompliance can give rise to liability under Section 1983.

24 **B. MOTIONS TO STRIKE**

25 Mr. Hendrickson moves to strike Defendants' motions for summary judgment to
26 the extent the total page number of those motions exceeds 24 pages. The Court denies this
27 motion. While Local Civil Rule 7(e)(3) limits dispositive motions to 24 pages, the rule
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1 does not impose such a limit when a party files multiple motions addressed to different
2 issues. Mr. Hendrickson alleged 14 counts against Defendants, and Defendants are
3 entitled the opportunity to challenge the merits of these claims.

4 Mr. Hendrickson also filed a surreply and moved to strike Defendants' inclusion of
5 evidence pertaining to the alleged expiration of the registration for the impounded
6 vehicles. The Court need not address this motion to strike, because the search and
7 impound of the vehicle did not violate Mr. Hendrickson's rights regardless of the status of
8 the registration. The Court did not consider the expired registration issue.

9 **V. ORDER TO SHOW CAUSE**

10 Under 28 U.S.C. § 1367, a federal court may assume supplemental jurisdiction
11 over all other claims that are so related to claims in the action within the original
12 jurisdiction so that they form part of the same case or controversy. The Court may
13 decline to exercise this supplemental jurisdiction if (1) the claim raises a novel or
14 complex issue of state law, (2) the state claim substantially predominates over the claim
15 or claims over which the district court has original jurisdiction, (3) the district court has
16 dismissed all claims over which it has original jurisdiction, or (4) in exceptional
17 circumstances, there are other compelling reasons for declining jurisdiction. 28 U.S.C. §
18 1367(c).

19 By this order, the Court dismisses all of Plaintiff's federal claims. The parties are
20 ordered to show cause, if any, why the remaining state claims should not be remanded to
21 state court.

22 **VI. ORDER**

23 Therefore, it is hereby **ORDERED** that

24 1. Defendants' motion for summary judgment based on collateral estoppel
25 (Dkt. 124) is **GRANTED** as to any claims arising from Mr. Hendrickson's arrest for
26 possession of stolen property, and these claims are **DISMISSED WITH PREJUDICE**.
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2. Defendants' motions for summary judgment based on municipal liability and qualified immunity (Dkts. 129 and 130) are **GRANTED**. Plaintiff's Section 1983 claims are **DISMISSED WITH PREJUDICE**.


3. Defendants' motion for summary judgment regarding Plaintiffs' claim for punitive damages against Officers Romaine and Budinich under Section 1983 (Dkt. 132) is **GRANTED**, and this claim is **DISMISSED WITH PREJUDICE**.

4. Plaintiff's motion for partial summary judgment (Dkt. 134) is **DENIED**.

5. Plaintiff's negligent supervision and negligent hiring claims are **DISMISSED WITH PREJUDICE**.

6. The parties are ordered to show cause, if any, why the Court should not remand the remaining state law claims no later than December 17, 2008.

DATED this 10th of December, 2008.


BENJAMIN H. SETTLE
United States District Judge